

University of Mississippi

eGrove

Guides, Handbooks and Manuals

American Institute of Certified Public
Accountants (AICPA) Historical Collection

1996

Practice guide to international tax planning 1996

American Institute of Certified Public Accountants. Tax Division

Follow this and additional works at: https://egrove.olemiss.edu/aicpa_guides



Part of the [Accounting Commons](#), and the [Taxation Commons](#)

1996

PRACTICE GUIDE

to

INTERNATIONAL TAX PLANNING

AICPA TAX DIVISION

Copyright © 1996 by the
American Institute of Certified Public Accountants, Inc.
1211 Avenue of the Americas, New York, NY 10036-8775

**These materials may not be edited or reproduced for other than
personal or internal use.**

1996 Practice Guide International Tax Planning

Table of Contents

<u>Checklist</u>	<u>Section</u>	<u>Page</u>
Introduction		
Forms of Doing Business		
Direct Export	1	1-1
Foreign Branch	1	1-2
Foreign Subsidiary	1	1-5
Receipt of License Fees, Royalties and Other Payments	1	1-8
S Corporations Doing Business Abroad	1	1-9
Host Country Tax Issues		
Formation	2	2-1
Host Country Taxation	2	2-2
Repatriation of Earnings and/or Capital	2	2-4
Income Tax Treaty Provisions	2	2-4
Host Country Reorganizations and Liquidations	2	2-4
Income Tax Treaties	3	3-1
Offshore Anti-Deferral Provisions		
Foreign Personal Holding Company	4	4-1
Stock Ownership Considerations	4	4-1
Foreign Personal Holding Company Income	4	4-1
U.S. Shareholder - Tax Considerations	4	4-2
Other Considerations	4	4-2
Controlled Foreign Corporations (CFCs)		
Stock Ownership Considerations	4	4-2
Subpart F Income, Sections 956 and 956A Income	4	4-3
Exclusions from Subpart F income	4	4-4
Limitations on Amount of Subpart F Income	4	4-4
U.S. Shareholder - Tax Considerations/Elections	4	4-4
Other Considerations	4	4-5

1996 Practice Guide International Tax Planning

Table of Contents

<u>Checklist</u>	<u>Section</u>	<u>Page</u>
Offshore Anti-Deferral Provisions (Continued)		
Passive Foreign Investment Companies	4	4-5
Stock Ownership Considerations	4	4-5
Passive Foreign Investment Company Income	4	4-5
Special PFIC Rules	4	4-6
U.S. Shareholder - Tax Considerations	4	4-6
Foreign Tax Credit	5	5-1
Foreign Sales Corporations (FSC)		
Determination of Export Receipts	6	6-1
Definition of Export Property	6	6-2
Estimate of FSC Benefits	6	6-4
Transfer Pricing	6	6-6
FSC Requirements (Applicable to Both Regular and "Small" FSCs)	6	6-6
Additional Requirements (Applicable to Regular FSCs Only)	6	6-7
U.S. Income Taxation of Expatriates	7	7-1

NOTICE TO READERS

Tax practice guides are designed as educational and reference material for the members of the Tax Section and others interested in the subject. They do not establish standards or preferred practices.

Although much thought and effort have gone into the development of these guides, they are subject to change. Many of the regulations related to current and prior tax acts have not been issued. These checklists need to be revised as new developments occur.

Accordingly, these practice guides are issued as drafts only, and you retain responsibility for their final content. Please review them carefully and make any changes necessary for your particular use.

Members of the 1995-1996 AICPA International Taxation Committee prepared these practice guides. The members of that committee are listed below:

Thomas M. Moore, *Chairman*

John E. Allis
David M. Benson
Eugene N. Ferraro
Sally Kittell
Daniel S. Lange
Louis J. Mezzo
Barbara A. Moore

Frank O'Connell, Jr.
Wesley N. Riemer
Marjorie Rollinson
Ellen J. Rowen
Aaron A. Rubinstein
John F. Shomaker, III

Robert A. Petersen, Executive Committee Liaison

Carol K. Shaffer, Manager, AICPA Tax Division Staff

PREFACE

Enclosed is the 1996 Practice Guide to International Tax Planning prepared by the International Taxation Committee of the AICPA Tax Division. The purpose of this Guide is to assist practitioners involved in international transactions identify possible tax issues and planning opportunities.

If you are a Tax Section member who indicated an interest in receiving information from the International Taxation Committee, practice guides were sent to you as part of your basic membership benefit package. If you are not a member of the Section, you may wish to join in order to expedite receipt of these guides and to take advantage of the many benefits of Section membership. Please contact Judy Smith at (202) 434-9270 if you would like information on membership.

The Committee hopes these practice guides will be helpful to you and solicits your comments for their improvement. Please submit comments and suggestions on the enclosed form.

A blank, preaddressed comment sheet with return postage is included for your use. To mail, fold the sheet with the address showing on the back of the form, tape and place in mail.

Introduction

This Practice Guide to International Tax Planning is intended as a reference tool to assist you in situations where U.S. taxpayers are conducting business operations abroad. The checklists should be useful in planning for such operations and in complying with the complex U.S. tax rules relating to foreign operations of U.S. taxpayers. The checklists attempt to identify most of the common (and some of the uncommon) issues encountered when doing business abroad. The checklists are not intended as a substitute for in-depth research. Only by supplementing the checklists with appropriate research can an adequate level of planning and compliance be obtained.

Checklist 1, Forms of Doing Business, is intended to assist the user in understanding the tax implications of various forms in which to conduct international operations. Checklist 1 refers the user to other checklists so it can be used as a starting point for planning. Alternatively, each of the other checklists can be used independently.

WARNING!

This package of practice guides was completed in the Fall of 1996. It does not necessarily reflect subsequent legislative, administrative or tax form changes. You may need to revise these guides accordingly.

COMMENT SHEET

Following are my recommendations for improving the "1996 Practice Guide to International Tax Planning" published by the AICPA Tax Division.

[illegible]

Fold Here

PLACE
STAMP
HERE

American Institute of CPA's

Attn: International Checklist

Tax Division
1455 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20004-1081

Fold Here

Staple Here

INTERNATIONAL TAX ISSUES CHECKLIST

FORMS OF DOING BUSINESS

Note: The purpose of this checklist is to assist the user in understanding the tax implications of various forms in which to conduct international operations. This is done by identifying major issues of various forms of doing business abroad and by referring the user to more detailed checklists concerning certain specific areas of international taxation. This checklist is not intended to provide all tax issues which may be encountered when planning for international operations.

Warning: The citations contained in this checklist are primarily to the U.S. Internal Revenue Code unless otherwise noted. Additional research may be required in the related regulations thereunder.

Client Name and Number: _____

Prepared by: _____ Date: _____

Reviewed by: _____ Date: _____

General

The determination of the form of doing business in a foreign jurisdiction must start with the company establishing its business goals and objectives with respect to a particular foreign market. The company must consider several factors concerning the target foreign market, such as, acceptance of its product, the economies of local production versus importation, licensing the use of the product or technology to a foreign licensee versus direct sales of the product and possible restrictions on foreign persons conducting business activities in the foreign market.

If the company has determined that the target foreign market holds promise for its product, the company must then determine if it can sufficiently penetrate the market by exporting its product directly to customers or through a sales representative in the host country. On the other hand, market penetration might be easier with a presence in the host country in the form of a foreign branch or subsidiary.

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<u>DIRECT EXPORT</u>			
1) Has the company considered the following with regard to the importation of goods into the foreign country (See Section 2)	_____	_____	_____
.1) Whether there are customs duties or other local levies imposed by the foreign country?	_____	_____	_____
.2) Whether customs duties or other local levies may affect the company's evaluation of direct export versus other forms of doing business in the foreign country?	_____	_____	_____
.3) Whether it will be liable for collection of customs duties and any applicable value-added tax (VAT)?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
4) Whether there are advantages to registering to collect VAT under its circumstances even if it does not have a permanent establishment in the target jurisdiction?	_____	_____	_____
5) If liable for collection of VAT or customs duties and the company has or will have a local stock of inventory, whether payment can be deferred through a bonded warehouse or proximate cross border warehouse?	_____	_____	_____
2) Has a foreign sales corporation (FSC) been considered? (See Section 6)	_____	_____	_____
3) Has the company considered foreign title passage to generate foreign source income to use foreign tax credits? [§863(b)6 and §861(b)(6)] Note: Foreign title passage is ordinarily determined by where the risk of loss is transferred. (See Section 5).	_____	_____	_____
4) Has the company considered whether its activities in a foreign country are sufficient to cause it to be taxable as a permanent establishment (e.g., a branch or the use of a dependent agent)? Note: Consider reviewing the permanent establishment article of the income tax treaty, if applicable with the foreign country where the activities are being conducted. (See Sections 2 and 3)	_____	_____	_____

FOREIGN BRANCH

Note: The "Foreign Branch" and "Foreign Subsidiary" sections should be considered together if the company is attempting to assess whether a foreign branch or subsidiary is most desirable.

- 5) In comparing operations as a foreign branch versus foreign subsidiary, has the company considered the greater flexibility of a foreign subsidiary in timing its repatriation of profits, (i.e., the profits of a foreign subsidiary are not taxed in the U.S. until repatriated while the profits of a foreign branch are currently taxable in the U.S.)?

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
6) Has the company considered whether the activities of its foreign branch will cause it to be subject to income tax in the foreign country? Note: Consider if the branch is a permanent establishment under the tax treaty with the host country, if applicable, or under local law of the host country. (See Sections 2 and 3).	<hr/>	<hr/>	<hr/>
7) Has the company considered the host country taxation of the foreign branch including (See Section 2):			
.1) Federal and local tax rates on income?	<hr/>	<hr/>	<hr/>
.2) Other taxes or customs duties?	<hr/>	<hr/>	<hr/>
.3) Whether losses can be carried over and, if so, how long?	<hr/>	<hr/>	<hr/>
.4) If the host country imposes a branch tax on net after-tax profits whether or not repatriated, thereby increasing the effective tax rate on branch profits? Note: An income tax treaty may exist to reduce the branch tax rate.	<hr/>	<hr/>	<hr/>
.5) Whether the host country allows for the allocation of home country administrative and overhead expenses or management fee to the branch to reduce host country taxable income?	<hr/>	<hr/>	<hr/>
.6) Whether the host country imposes a withholding tax on the payment of home country administrative and overhead expenses or management be charged to the branch?	<hr/>	<hr/>	<hr/>
8) If the company plans to incur initial losses in the foreign branch, has the company considered if the losses can be utilized in the company's U.S. tax returns?	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
9) If the company contemplates sales through its foreign branch, has it considered the U.S. and host country tax implications of compensating the branch in the following forms:			
.1) Commission basis?	_____	_____	_____
.2) Buy-sell basis?	_____	_____	_____
.3) Cost-plus basis (i.e., payment to branch equal to branch expenses plus acceptable profit percentage)?	_____	_____	_____
<p>Note: Choosing the appropriate method can allow for the use of losses and minimize foreign and U.S. taxes within the limitations of host country and U.S. transfer pricing rules.</p>			
10) If the company plans to generate taxable income through its foreign branch, has the company considered the following concerning the use of the foreign taxes as a credit (See Section 5):	_____	_____	_____
.1) Whether the resulting foreign income taxes can be utilized by the company as a foreign tax credit?	_____	_____	_____
.2) Whether the company has current losses, thereby precluding current use of the foreign taxes as a credit?	_____	_____	_____
.3) Whether the company has excess foreign tax credits, thereby precluding current use of the foreign taxes as a credit?	_____	_____	_____
.4) If unused foreign tax credits can be carried back to prior years or forward to future years?	_____	_____	_____
11) If the company is selling personal property through the branch, has the company considered foreign title passage to generate foreign source income to use foreign tax credits? [§863(b) and §861(b)(6)] Note: Foreign title passage is ordinarily determined by where the risk of loss is transferred. (See Section 5).	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
12) Has the company considered using a U.S. subsidiary to operate the foreign branch thereby segregating the company's U.S. operations from the foreign branch operations (e.g., for legal or state tax purposes)?	_____	_____	_____
13) If the company plans to transfer U.S. personnel to the foreign branch, has the company considered the tax implications relating to the transferred employees? (See Section 7).	_____	_____	_____

FOREIGN SUBSIDIARY

Note: The "Foreign Subsidiary" and "Foreign Branch" Sections should be considered together if the company is attempting to assess whether a foreign subsidiary or branch is most desirable.

14) Has the company considered whether it should incorporate in the host country or a third country?	_____	_____	_____
15) Has the company considered incorporation requirements and the costs of incorporation? (See Section 2.)	_____	_____	_____
16) Has the company considered the use of a hybrid entity in the host country which may be taxed as a partnership in the U.S. and as a corporation in the host country? Note: This may be advantageous where the company will own 50 percent or less of the foreign operation and desires to avoid the separate foreign tax credit limitation under §904(d)(2)(E), the company desires limited liability in the host country but current taxation in the U.S. or the company is an S corporation.	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
17) Has the company considered the host country taxation of the foreign subsidiary including: (See Section 2):			
.1) Federal and local tax rates on income?	_____	_____	_____
.2) Other taxes and customs duties?			
.3) Whether losses can be carried over and, if so, how long?	_____	_____	_____
.4) The withholding tax rate on dividends repatriated which increases the effective tax rate on the subsidiary's profits? Note: An income tax treaty may exist to reduce the rate.	_____	_____	_____
.5) The deduction of home country administrative and overhead expenses or management fee relating to the subsidiary's operations?	_____	_____	_____
.6) Whether a withholding tax is imposed on payments of administrative and overhead expenses or management fee made to the U.S. parent company?	_____	_____	_____
18) If the company plans to incur initial losses in the foreign subsidiary, has the company considered that it will not receive benefit for the losses on its U.S. income tax return?	_____	_____	_____
19) If the company contemplates sales through its foreign branch, has it considered the U.S. and host country tax implications of compensating the branch in the following forms:			
.1) Commission basis	_____	_____	_____
.2) Buy-sell basis:	_____	_____	_____
.3) Cost-plus basis: (i.e., payment to subsidiary equal to subsidiary's expenses plus acceptable profit percentage)?	_____	_____	_____
Note: Choosing the appropriate method can allow for the use of losses and minimize foreign and U.S. taxes within the limitations of host country and U.S. transfer pricing issues.			

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
20) Has the company considered that it would be entitled to a deemed paid foreign tax credit when it receives dividends from the foreign subsidiary [§902]? (See Section 5).	_____	_____	_____
21) If the company is selling personal property through the subsidiary, has the company considered foreign title passage to generate foreign source income to use foreign tax credits? [§863(b) and §861(b)(6)] Note: Foreign title passage is ordinarily determined by where risk of loss is transferred. (See Section 5).	_____	_____	_____
22) Has the company considered that income of the foreign subsidiary may be subject to U.S. income tax currently under the provisions relating to foreign personal holding companies, controlled foreign corporations or passive foreign investment companies? (See Section 4).	_____	_____	_____
23) If a foreign branch is to be incorporated, has the company considered the foreign loss recapture rules of §904(f) and §367(a)?	_____	_____	_____
24) If tangible or intangible property is being transferred to the corporation, has the company considered §367(a), §367(d) and §1491?	_____	_____	_____
25) If the subsidiary is incorporated in Mexico or Canada, has the company considered an election under §1504(d) to include the subsidiary in a consolidated U.S. income tax return (i.e., provided that the subsidiary is maintained solely for the purpose of complying with the laws of such country)?	_____	_____	_____
26) If the foreign subsidiary will engage in transactions with its U.S. parent or other related parties:			
.1) Has the company considered if there will be appropriate intercompany charges to meet the arm's length standards of §482 and of the host country?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
2) Has the company considered the contemporaneous documentation requirements of §6662(e)(3)(B) and the tax return disclosure requirements of §6694(a)(3) with respect to the arm's length standards of §482?	_____	_____	_____
27) If the company plans to transfer U.S. personnel to the foreign subsidiary, has the company considered the tax implications relating to the transferred employees? (See Section 7).	_____	_____	_____
<u>RECEIPT OF LICENSE FEES, ROYALTIES AND OTHER PAYMENTS</u>			
28) Has the company reviewed the possible U.S. and foreign tax advantages and disadvantages of advance lump-sum payments for technology (which may be characterized as payments arising from the sale or exchange of a capital asset), as either total or partial payment for technology?	_____	_____	_____
29) In considering an advance lump-sum payment, has the source of income for such payment been considered compared to periodic payments?	_____	_____	_____
30) Has the company considered that foreign taxes withheld from the payments for technology, whether lump-sum or periodic payment, may be eligible for U.S. foreign tax credit treatment? (See Section 5).	_____	_____	_____
31) Has the company considered that the payment may be eligible for a reduction in or an exemption from withholding tax in the foreign country pursuant to an income tax treaty with foreign country? (See Section 3).	_____	_____	_____
32) If the payment is eligible for a reduction in or exemption from foreign withholding tax under an income tax treaty, has the company filed the appropriate documents with the payor or foreign country to be eligible for such treaty benefits?	_____	_____	_____
33) Has the company done everything necessary to secure host country deductibility of the payments, including obtaining any required local approvals? (See Section 2).	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
34) If the payments are from a related party.			
.1) has the company considered if the payments meet the arm's length standards of §482 and of the host country?	_____	_____	_____
.2) Has the company considered the contemporaneous documentation requirements of §6662(e)(3)(B) and the tax return disclosure requirements of §6694(a)(3) with respect to the arm's length standards of §482?	_____	_____	_____
<u>S CORPORATIONS DOING BUSINESS ABROAD</u>			
35) If the U.S. company is an S corporation:			
.1) Has the company considered that tax attributes of foreign operations (e.g., income, losses, credits, etc.) will pass through to the shareholders?	_____	_____	_____
.2) Has the company considered that foreign taxes paid or accrued will pass through to the shareholders to be claimed as a deduction or foreign tax credit? (See Section 5).	_____	_____	_____
36) If the S corporation plans to own or owns stock in a foreign corporation (i.e., less than 80 percent), has the company considered that the shareholders will not be entitled to deemed paid foreign tax credits under §902? (See Section 5).	_____	_____	_____
37) If the S corporation is contemplating the use of a foreign sales corporation (FSC), has the company considered that the shareholders will not be entitled to the dividend received deduction, thereby canceling the benefits of a FSC? (See Section 6).	_____	_____	_____
38) If the S corporation desires to operate in a foreign country through an entity with limited liability (e.g., a corporation), but is unable to do so because it cannot own 80 percent or more of a corporation or tax attributes (e.g. income, losses or foreign tax credits) do not pass through from a foreign corporation, has the company considered the use of a hybrid entity (e.g., a limited liability company) which may be treated as a partnership for U.S. tax purposes and a corporation for foreign tax purposes?	_____	_____	_____

INTERNATIONAL TAX ISSUES CHECKLIST**HOST COUNTRY TAX ISSUES**

Overall purpose of this checklist: The purpose of this checklist is to assist the preparer in identifying issues which will require additional research in order to gain an understanding of the tax exposure a client faces when expanding business operations into foreign jurisdictions.

Client Name and Number: _____

Prepared by: _____ Date: _____

Reviewed by: _____ Date: _____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<u>FORMATION</u>			
1) What are the local audit requirements in the host country? Are these audit requirements different for branches vs. subsidiaries?	_____	_____	_____
2) Can a tax advantage be gained by having a foreign presence without taxation in the host or third country?	_____	_____	_____
3) Will activities in the host country jurisdiction meet the definition of commercial residency for tax purposes?	_____	_____	_____
4) How are host country administrative or liaison offices treated?	_____	_____	_____
5) What constitutes local tax residency in the host country concerning host country branches with foreign home offices?	_____	_____	_____
6) How should the host country business be established, as a branch or as a subsidiary? Are there tax distinctions in the host country between branches and subsidiaries, such as differences in tax rates? Note: Consider the effect that an income tax treaty with the host country may have on a branch or subsidiary?	_____	_____	_____
7) Is there a required minimum local ownership in host country subsidiaries?	_____	_____	_____
8) Are there other restrictions on ownership of host country subsidiaries?	_____	_____	_____
9) Should a host country holding company be created?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
10) Should an offshore third country holding company be used to enter the host country?	_____	_____	_____
11) How should the host country business be financed (i.e., by debt or equity)?	_____	_____	_____
12) Are there host country thin capitalization restrictions?	_____	_____	_____
13) What exchange controls exist on inward investments?	_____	_____	_____
14) Should an offshore third country finance company be used to enter the host country?	_____	_____	_____
15) Should an offshore third country licensing company be used to enter the host country?	_____	_____	_____
16) Should an offshore third country trading company be used to enter the host country subsidiary?	_____	_____	_____
17) What are the implications of using a third country property rental company?	_____	_____	_____
<u>HOST COUNTRY TAXATION</u>			
18) In general, what are the level of income taxes (i.e., are they greater or less than in the U.S.)?	_____	_____	_____
19) Are there local tax incentives (e.g., tax credits or tax exemptions for new investment)?	_____	_____	_____
20) What are the local rates of taxation?	_____	_____	_____
21) Are there preferential capital gains tax rates?	_____	_____	_____
22) Are there penalties for accumulating earnings in the host country?	_____	_____	_____
23) Are there taxes based on capital?	_____	_____	_____
24) Are there local taxes below the national level?	_____	_____	_____
25) Do other nonincome type taxes apply (e.g., VAT, property, payroll, stamp, realty, registration, etc.)?	_____	_____	_____
26) What host country special deductions, exemptions, incentives are available?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
27) What depreciation methods are allowable?	_____	_____	_____
28) Are there accelerated depreciation methods and/or expensing provisions which could be of benefit?	_____	_____	_____
29) What are the rules for deducting local taxes at the national and local level within the host country?	_____	_____	_____
30) What restrictions are there on T & E expenses?	_____	_____	_____
31) Is there a difference in taxation of host country or other source income depending on whether the taxpayer is resident or nonresident?	_____	_____	_____
32) What are the transfer pricing rules in the host country on related party transactions?	_____	_____	_____
33) What are the allowable inventory methods?	_____	_____	_____
34) What business expenses are not tax deductible?	_____	_____	_____
35) How is interest expense treated for national and municipal tax purposes, i.e., are such payments deductible? Are there thin capitalization restrictions? (Refer to question 10)	_____	_____	_____
36) How are exchange gains and losses treated for tax purposes?	_____	_____	_____
37) What are the carryback/carryforward periods concerning net operating losses and foreign tax credits?	_____	_____	_____
38) What industry specific tax issues are relevant (e.g., manufacturing, building and construction, real estate investments, hotels, service industries, financial institutions, and tax exempts)?	_____	_____	_____
39) What are the payment dates and filing dates for local and national returns?	_____	_____	_____
40) Are tax consolidations permissible in the host country?	_____	_____	_____
41) Are advance rulings required or possible within the local jurisdiction for tax purposes?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
42) What is the tax audit process with respect to a host country investment made from a foreign jurisdiction?	_____	_____	_____
43) How are host country capital gains treated for tax purposes when earned by nonresidents?	_____	_____	_____
<u>REPATRIATION OF EARNINGS AND/OR CAPITAL</u>			
44) In the event of establishing a multi-tiered structure in the host country, how are dividends from domestic sources treated for local tax purposes?	_____	_____	_____
45) What are the implications of profit repatriation? For example, are there different tax rates applicable to repatriated vs. retained earnings? Are there secondary taxes applicable to distributions?	_____	_____	_____
46) What withholding taxes are imposed locally on profit repatriations in the form of dividends, interest, royalties technical assistance fees, management fees, etc.?	_____	_____	_____
47) What are the implications of a capital repatriation? Are distributions from accumulated earnings? Furthermore, can original invested capital be repatriated without any restrictions? What about exchange gains and losses?	_____	_____	_____
<u>INCOME TAX TREATY PROVISIONS</u>			
48) What is the tax treaty network of the host country?	_____	_____	_____
49) What tax treaty planning opportunities are available?	_____	_____	_____
50) Is double taxation relief in the form of a foreign tax credit or as an exclusion from income available? Furthermore, does the treaty provide relief in terms of exempting foreign source income from taxation?	_____	_____	_____
<u>HOST COUNTRY REORGANIZATIONS AND LIQUIDATIONS</u>			
51) What are the implications of transferring a host country branch to a host country subsidiary?	_____	_____	_____
52) What are the implications of transferring additional assets to the host country subsidiary?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
53) What if the host country business is acquired in a host country subsidiary format?	_____	_____	_____
54) What are the implications of selling the host country branch?	_____	_____	_____
55) What are the implications of selling the host country subsidiary?	_____	_____	_____
56) What exchange control obstacles must be overcome?	_____	_____	_____
57) Does the host country have tax-free merger/reorganization provisions?	_____	_____	_____
58) Is the shareholder taxed on the sale of shares even if he is a nonresident?	_____	_____	_____
59) Can assets be stepped up in reorganizations?	_____	_____	_____

INTERNATIONAL TAX ISSUES CHECKLIST**INCOME TAX TREATIES**

Note: All references contained in this checklist are to the 1981 U.S. Model Income Tax Treaty. Such references need to be revised when reviewing the income tax treaty of a specific country.

Overall purpose of this checklist: The purpose of this checklist is to assist the preparer in identifying issues with respect to income tax treaty articles that could apply to a U.S. business when it engages in commercial transactions in foreign jurisdictions. The purpose of an income tax treaty is to minimize instances where double taxation can arise.

Client Name and Number: _____

Prepared by: _____ Date: _____

Reviewed by: _____ Date: _____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
1) Determine the following concerning income tax treaties between the U.S. and the host country in which the company plans to conduct operations:	_____	_____	_____
.1) Is there an income tax treaty?			
.2) Is it currently in effect?			
.3) Have there been any protocols which would modify the original treaty?	_____	_____	_____
.4) Will the company (and its foreign operations) be considered resident of the U.S. or host country for purposes of applying the various treaty provisions? [Article 4]	_____	_____	_____
.5) To which U.S. and host country taxes does the treaty apply? [Article 2]	_____	_____	_____
2) Will the company's host country activities create a permanent establishment possibly leading to foreign income taxation? [1981 U.S. Model Income Tax Treaty Articles 5(1) and 5(2)(a) through (f)]?			
3) Can the company's host country activities be excluded from permanent establishment classification in the host country because such activities are limited to:	_____	_____	_____
.1) the use of facilities solely for the purpose of storage, display, or delivery of goods? [Article 5(4)(a)]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.2) the maintenance of inventory solely for the purpose of storage, display or delivery? [Article 5(4)(b)]	_____	_____	_____
.3) the maintenance of inventory solely for the purpose of processing by a third party? [Article 5(4)(c)]	_____	_____	_____
.4) the maintenance of a fixed place of business for the purpose of purchasing of goods? [Article 5(4)(d)]	_____	_____	_____
.5) the maintenance of a fixed place of business solely for the purpose of collecting information? [Article 5(4)(d)]	_____	_____	_____
.6) the maintenance of a fixed place of business solely for the purpose of carrying on preparatory or auxiliary activities, e.g., activities which are not essential and significant as to the activity of the enterprise as a whole? [Article 5(4)(e)]	_____	_____	_____
4) Will the company locate an employee in the host country? [Article 5(5)]	_____	_____	_____
5) If the company transfers an employee to the host country, will this individual have the authority to conclude contracts in the name of the company in the host country? [Article 5(5)] Note: such activities will likely create a tax liability in the host country.	_____	_____	_____
6) Will the company appoint a broker, general commission agent, or any other independent agent in the host country? [Article 5(6)] Note: such activities generally do not give rise to host country taxation.	_____	_____	_____
7) Does the treaty provide for an allocation of general and administrative expenses incurred outside the host country in determining the profits of a permanent establishment? [Article 7]	_____	_____	_____
8) How does the treaty provide for relief from double taxation (e.g., a foreign tax credit or income inclusion)? [Article 23]	_____	_____	_____
9) Will the company form a subsidiary in the host country, and if so, are profit repatriations in the form of dividends a concern?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
10) If the company intends to repatriate dividends from its host country subsidiary, does the treaty provide for a reduced rate of withholding tax on host country dividends? [Article 10]	_____	_____	_____
11) If the company intends to finance its host country operations with debt, does the treaty provide for a reduced rate of withholding on interest payments? [Article 11]	_____	_____	_____
12) If the company intends to conduct licensing activities in the host country, does the treaty provide for a reduced rate of withholding tax on royalty payments? [Reference Article 12]	_____	_____	_____
13) Will the company earn income from host country sources which could be classified as "other income" eligible for relief from host country taxation? [Reference Article 21]	_____	_____	_____
14) Has the company considered the treaty based return position disclosure requirements of §6114?	_____	_____	_____

INTERNATIONAL TAX ISSUES CHECKLIST**OFFSHORE ANTI-DEFERRAL PROVISIONS**

Warning: The citations contained in this checklist are primarily to the U.S. Internal Revenue Code unless otherwise noted. Additional research may be required in the related regulations thereunder.

Client Name and Number: _____

Prepared by: _____ Date: _____

Reviewed by: _____

Date: _____

<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
-------------	------------	------------------------------------

FOREIGN PERSONAL HOLDING COMPANY

U.S. taxpayers with foreign corporations earning investment income can lose the ability to defer profits offshore where the foreign company falls within the foreign personal holding company regime [§551-556]. Accordingly:

Stock Ownership Considerations

- 1) Does the foreign corporation satisfy the stock ownership requirement? [§552(a)(2)]
- .1) For purposes of determining the stock ownership requirement, have the attribution rules been properly applied? [§554]
- .2) If the foreign corporate stock is held through a foreign partnership, estate or trust, has the proportionate share ownership by the client been appropriately considered? [§551(f)]

_____	_____	_____
_____	_____	_____
_____	_____	_____

Foreign Personal Holding Company Income

- 2) Does your client's foreign corporation meet the gross income requirement? [§552(a)(1)]
- .1) Have all of the elements of foreign personal holding company income been identified in the foreign corporation's profit and loss statement? [§553]

_____	_____	_____
_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.2) Have previously taxed earnings been appropriately reclassified on the books of the foreign personal holding company? [§551(d)]	_____	_____	_____
.3) Do the look through rules for dividends and interest received from related parties apply? [§552(c)] Note: These rules can affect the classification of dividend and interest income as foreign personal holding company and thus impact the offshore deferral ability.	_____	_____	_____
3) Can the foreign company be exempted from the foreign personal holding company regime? [§552(b)]	_____	_____	_____
<u>U.S. Shareholder - Tax Considerations</u>			
4) Where foreign personal holding company status exists has the appropriate amount been included in the U.S. shareholder's income? [§551(b)]	_____	_____	_____
.1) As a result of the gross income inclusion has the shareholder's basis in the foreign personal holding company been properly adjusted? [§551(e)]	_____	_____	_____
.2) Have appropriate information returns been filed? [§551(c)]	_____	_____	_____
<u>Other Considerations</u>			
5) Have you considered the interplay of the foreign personal holding company provisions together with the passive foreign investment company regime? [§551(g)] Note: Passive foreign investment companies are described below.	_____	_____	_____

CONTROLLED FOREIGN CORPORATIONS (CFCs)

U.S. shareholders with an ownership in a controlled foreign corporation (CFC) are subject to a special U.S. tax regime which may reduce or eliminate the ability to defer profits offshore [§951 through §964] under the subpart F provisions.

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<u>Stock Ownership Considerations</u>			
1) Does your client own more than 50% of the total combined voting power or value of the stock of a CFC? [§957(a)] Note: where the CFC is engaged in insurance activities, this question must be addressed in terms of 25% interest in voting power or value. [§957(b)]	_____	_____	_____
1) Is your client a "U.S. shareholder" [as defined in §951(b)]	_____	_____	_____
2) Have all the U.S. shareholders of the CFC been identified? [§951(b)]	_____	_____	_____
3) For purposes of determining these stock ownership requirements, have you considered the attribution rules? [§958]	_____	_____	_____
<u>Subpart F Income, Sections 956 and 956A Income</u>			
2) IRC Sections 951 and 952 define the types of income potentially includable by a "U. S. shareholder" of a CFC. These include subpart F income, and §956 and §956A income. Accordingly:			
1) Does the foreign subsidiary engage in insurance activities? [§953]	_____	_____	_____
2) Can the CFC be classified as a foreign base company? [For a detailed listing of foreign base company income, see §954(a)]	_____	_____	_____
3) Has the CFC engaged in an international boycott? [§952(a)(3) and §999]	_____	_____	_____
4) Has the CFC paid any bribes, kickbacks, etc.? [§952(a)(4)]	_____	_____	_____
5) Has the CFC invested in U.S. property? [§956]	_____	_____	_____
6) Has the foreign subsidiary invested in excess passive assets? [§956A]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
7) Could the CFC be classified as a foreign personal holding company for subpart F purposes? [§954(c)]	_____	_____	_____
<u>Exclusions from Subpart F Income</u>			
3) Can the CFC be excluded from the subpart F provision under the de minimis rule? [§954(b)(3)]	_____	_____	_____
4) Can the CFC be excluded from the subpart F provisions because it receives amounts which are excluded from the foreign personal holding company income categories? [§954(c)(2) and (3)]	_____	_____	_____
5) Can the CFC be excluded from the subpart F provisions for certain income subject to high foreign taxes? [§954(b)(4)]	_____	_____	_____
6) Can the income of the CFC be excluded from the subpart F provisions with respect to U.S. source income which is effectively connected with a U.S. trade or business? [§952(b)]	_____	_____	_____
<u>Limitations on amount of Subpart F Income</u>			
7) Has the amount of the potential subpart F income been compared to the earnings and profits? [§952(c)(1)(A)]	_____	_____	_____
8) Does the CFC have prior year deficits which may impact the subpart F income inclusion? [§952(c)(1)(B)]	_____	_____	_____
<u>U.S. Shareholder - Tax Considerations/Elections</u>			
9) Where the CFC earns subpart F income, or has income inclusions from §956 or §956A has the appropriate amount been included in the gross income of a U.S. shareholder? [§951(a)]	_____	_____	_____
10) If the CFC makes a distribution to the U.S. shareholder, can such amount be excluded from the gross income of the U.S. shareholder since it is attributable to income of previously taxed earnings and profits? [§959]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
11) Where amounts are included in gross income as a result of the subpart F provisions, can the U.S. shareholder claim a foreign tax credit? [§960]	_____	_____	_____
12) Has the shareholder considered the adjustments to basis in the CFC? [§961]	_____	_____	_____
<u>Other Considerations</u>			
13) Where the CFC is also classified as foreign personal holding company, has the interplay between the subpart F provisions and the foreign personal holding company provisions been considered? [§951(d)]	_____	_____	_____
14) Where the CFC is also classified as a passive foreign investment company, has the interplay between the subpart F provisions and the passive foreign investment company provisions been considered? [§951(f)]	_____	_____	_____

PASSIVE FOREIGN INVESTMENT COMPANIES

There is a special tax regime for CFCs which are classified as passive foreign investment companies (PFIC). [§1291 through 1297] Accordingly:

Stock Ownership Considerations

- | | | | |
|---|-------|-------|-------|
| 1) For purposes of determining the stock ownership requirement, have you considered the attribution rules? [§1297(a)] | _____ | _____ | _____ |
|---|-------|-------|-------|

Passive Foreign Investment Company Income

- | | | | |
|--|-------|-------|-------|
| 2) Does your client's foreign corporation satisfy the requirements of the gross income or asset test resulting in PFIC classification? [§1296(a)(1) and (2)] | _____ | _____ | _____ |
| 3) Have you properly classified the foreign corporation's income as passive for purposes of the PFIC income test? [§1296(b)] | _____ | _____ | _____ |
| 4) Have you considered the exceptions to passive income? [§1296(b)(2)] | _____ | _____ | _____ |
| 5) Have you applied the look through rules where there is a tiered foreign structure? [§1296(c)] | _____ | _____ | _____ |

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<u>Special PFIC Rules</u>			
6) Have you considered the special rules with respect to a start up year? [§1297(b)(2)]	_____	_____	_____
7) Have you considered the special rules where a corporation changes its business? [§1297(b)(3)]	_____	_____	_____
8) Have you considered the special rules for leased property in making PFIC determinations? [§1297(d)]	_____	_____	_____
9) Have you considered the special rules for certain intangibles with respect to PFIC determinations? [§1297(e)]	_____	_____	_____
<u>U.S. Shareholder - Tax Considerations</u>			
10) Has the PFIC made an excess distribution? §1291(b)]	_____	_____	_____
11) If an excess distribution has been received, has it been accorded its proper tax treatment? [§1291(a)(1)]	_____	_____	_____
12) Has there been a disposition of stock in a PFIC? [§1291(a)(2)]	_____	_____	_____
13) Is the shareholder of the PFIC required to recognize gain from a disposition as the result of making certain elections with respect to the PFIC? [§1291(d)(2)]	_____	_____	_____
14) Where there is an income inclusion as a result of investment in the PFIC, have the foreign tax credit rules been considered? [§1291(g)]	_____	_____	_____
15) Should the PFIC make an election to be currently taxed? [§1293]	_____	_____	_____
16) Can the PFIC be classified as a qualified electing fund in order to make this election? [§1295]	_____	_____	_____
17) Should the PFIC elect to extend the time for payment of tax on its undistributed earnings? [§1294]	_____	_____	_____
18) Has the shareholder considered any basis adjustments for PFIC income inclusions?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
19) Has the shareholder considered that distributions may be nontaxable distributions of previously taxed income?	<hr/>	<hr/>	<hr/>
20) Where the PFIC is also a CFC has the interplay between the subpart F provisions and the PFIC provisions been considered?	<hr/>	<hr/>	<hr/>

INTERNATIONAL TAX ISSUES CHECKLIST**FOREIGN TAX CREDIT**

Warning: The citations contained in this checklist are primarily to the U.S. Internal Revenue Code unless otherwise noted. Additional research may be required in the related regulations thereunder.

Overall purpose of this checklist: The purpose of this checklist is to assist the preparer in identifying issues concerning the U.S. foreign tax credit when a U.S. corporation pays income and withholding taxes in foreign jurisdictions.

Client Name and Number: _____

Prepared by: _____ Date: _____

Reviewed by: _____ Date: _____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
1) Have computations been made to determine whether it is more beneficial to claim foreign taxes as a credit or as deduction? [§901(a), §164]	_____	_____	_____
2) The determination of the amount of the company's deduction or credit for foreign taxes on foreign income can be based on a "paid" or "accrued" basis. Once elected, this method must be followed each year. For companies claiming foreign taxes on a "paid" basis, have all foreign taxes paid been translated at the rate of exchange in effect at the date the taxes were paid? For companies claiming foreign taxes on an "accrued" basis, have all foreign taxes been translated at the rate of exchange on the last day of the company's tax year? Note: Also consider the impact of an exchange rate differential when the foreign taxes are actually paid. [§1.905-5T, §1.905-3T(c)(3)]	_____	_____	_____
3) In order to be a creditable tax, the foreign tax must meet certain criteria. Accordingly, consider if the foreign tax falls within any of the following classifications:			
1) An income or excess profits tax [§1.901-2(a)]	_____	_____	_____
2) A tax based on net gain [§1.901-2(b)]	_____	_____	_____
3) A tax that is not a soak-up tax [as defined in §1.901-2(c)]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.4) Is the foreign tax in the form of a subsidy and therefore ineligible for the foreign tax credit? [§1.901-2(e)(3)]	_____	_____	_____
.5) Could the tax be classified as a noncompulsory amount and therefore ineligible for the foreign tax credit? [§1.901-2(e)(5)]	_____	_____	_____
.6) Could the tax be classified as a tax in lieu of income? [§903]	_____	_____	_____
4) Where a U.S. corporate taxpayer owns 10% or more of the voting stock of a foreign corporation from which it receives dividends, there are special foreign tax credit rules [§902]. Accordingly:			
.1) If the corporation is a domestic corporation, does it own 10% or more of the voting stock of a foreign corporation?	_____	_____	_____
.2) Does the corporation receive dividends from this foreign corporation?	_____	_____	_____
.3) If these conditions exist, have you appropriately considered the inclusion in the corporation's gross income the amount of the dividend and underlying foreign taxes paid by the 10% or more owned foreign corporation as a dividend? [§78 and §902(a)(1) and (2)]	_____	_____	_____
5) If the corporation has a multi-tiered foreign corporate structure, there are special foreign tax credit rules when the corporation receives dividends from these foreign corporations [§902(b)]. Accordingly:			
.1) Does the corporation own 10% or more of the voting stock of a foreign corporation (first-tier) from which it receives dividends in any taxable year?	_____	_____	_____
.2) Does this first-tier foreign corporation own 10% or more of the voting stock of a second-tier foreign corporation from which it receives dividends in any taxable year?	_____	_____	_____
.3) Does the second-tier foreign corporation own 10% or more of the voting stock of a third-tier foreign corporation from which it receives dividends in any taxable year?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.4) With respect to a two-tiered foreign corporate chain, does the domestic corporation own at least 5% in the second-tier as the result of multiplying its ownership in the first-tier by the first tier's ownership in the second-tiered foreign corporation?	<hr/>	<hr/>	<hr/>
.5) With respect to a three-tier foreign corporate structure, does the domestic corporation own at least 5% of the voting stock in the third-tier as a result of multiplying its ownership percentage in the voting stock of the first-tier, and in the voting stock owned by the second-tier, and in the voting stock owned by the third-tier?	<hr/>	<hr/>	<hr/>
.6) If these conditions exist with respect to either a two-tier or three-tier foreign corporate chain, have you appropriately included in the domestic corporation's income both the amount of the dividend and the appropriate amount of the underlying foreign taxes for all three chains? [§902(a), §78, §902(b)]	<hr/>	<hr/>	<hr/>
6) There is a special formula to determine the amount of foreign taxes to be included in income [§78] as well as the amount to be eligible for the foreign tax credit where there is a 10% or more ownership in a foreign corporation. This formula is expressed as follows:			
Post 1986 foreign taxes imposed on the foreign corporation	X	<u>Amount of dividend</u> Post 1986 after-tax earnings and profits of the foreign corporation	
Accordingly:			
.1) Have you considered the denominator of the fraction as all undistributed earnings since 1986 [§902(c)(1)]?	<hr/>	<hr/>	<hr/>
.2) Have you considered the multiplicand of the above fraction as all foreign income taxes since 1986 - excluding foreign taxes deemed paid on dividends distributed in prior years [§902(c)(2)]?	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.3) Where there is an acquisition of 10% or more of a foreign corporation after December 31, 1986 by a domestic corporation have you considered the special rules applicable to the above numerator and denominator? [§902(c)(3)]	_____	_____	_____
.4) Where there is a multi-tiered foreign structure, have you considered the special rules applicable for the above formula with respect to foreign income taxes? [§902(c)(4)(B)]	_____	_____	_____
.5) Where post-1986 undistributed earnings are exhausted, have you considered the special provisions applicable with respect to the above formula for earnings before 1987? [§902(c)(6)]	_____	_____	_____
7) There is a ceiling or limitation on the foreign tax credit which can be expressed as: <div style="display: flex; justify-content: space-between;"> <div>U.S. income tax before credits</div> <div>X</div> <div><u>Foreign source taxable income</u> Total taxable income [§904(a)]</div> </div> <p>This limitation computation is applied separately to different categories of income. Accordingly, have you considered this separate limitation with respect to:</p>			
.1) Passive income? [§904(d)(1)(A) and §904(d)(2)(A)]	_____	_____	_____
.2) There are special exceptions to the passive income separate limitation. Accordingly, have you considered the special rules applicable to high taxed income? [§904(d)(2)(F)]	_____	_____	_____
.3) Have you considered the special rules applicable to export financing interest as an exception to the passive income separate limitation? [§904(d)(2)(A)(iii)(II)]	_____	_____	_____
.4) High withholding tax interest? [§904(d)(1)(B)]	_____	_____	_____
.5) Financial services income? [§904(d)(1)(C) and §904(d)(2)(C)]	_____	_____	_____
.6) Shipping income? [§904(d)(1)(D) and §904(d)(2)(D)]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
7) Dividends from each noncontrolled foreign corporation, whether as a 10% or more ownership interest by a domestic corporation? [§904(d)(1)(E), §904(d)(2)(E)]	<hr/>	<hr/>	<hr/>
8) Certain dividends from export incentive entities, e.g., domestic international sales corporation or foreign sales corporation? [§904(d)(1)(F) through (H)]	<hr/>	<hr/>	<hr/>
9) General limitation income? [§904(d)(1)(I)]	<hr/>	<hr/>	<hr/>
10) For purposes of applying the correct separate foreign tax limitation category, have you considered the special look through rules where dividends, interest, rents or royalties are received from a controlled foreign corporation? [§904(d)(3)]	<hr/>	<hr/>	<hr/>
The rules must be applied to expenses to associate foreign taxes with each of the separate limitation categories? [§1.904-6]			
Accordingly, consider the expense apportionment and allocation rules for the following:			
1) Research and experimental expenditures [§864(f), §1.861-8(e)(3) and §1.861-14T(e)(2)]	<hr/>	<hr/>	<hr/>
2) Stewardship and supportive expenses attributable to dividends received [§1.861-(8)(e)(4), §1.861-14T(c)(3) and (4), §1.861-14T(e)(3)]	<hr/>	<hr/>	<hr/>
3) Legal and accounting fees and expenses [(§1.861-8(e)(5), §1.861-14T(e)(5), §1.861-14T(e)(5)]	<hr/>	<hr/>	<hr/>
4) State and local income taxes [§1.861-8(e)(6)]	<hr/>	<hr/>	<hr/>
5) Losses on the sale, exchange or other disposition of property [§1.861-8(e)(7)]	<hr/>	<hr/>	<hr/>
6) Net operating losses [§1.861-8(e)(8)]	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.7) Real estate taxes on a personal residence [§1.861-8(e)(9)(ii)]	_____	_____	_____
.8) Deduction for medical expenses [§1.861-8(e)(9)(iii)]	_____	_____	_____
.9) Personal exemptions [§1.861-8(e)(11)]	_____	_____	_____
.10) Interest expense [§864(e), §1.861-9T through 13T]	_____	_____	_____
9) If there are losses within any of the separate limitation categories, have the separate limitation loss and recharacterization rules been considered? [§904(f)(5)]	_____	_____	_____
10) If, after apportioning deductions to each of the separate limitation categories, there is an overall loss, have you considered the special recapture rules concerning an overall foreign loss? [§904(f)]	_____	_____	_____
11) Where a limitation exceeds the foreign taxes allocable to a separate limitation category in any one year, have you considered the carryback and carryover provisions for such taxes [§904(c)]	_____	_____	_____
12) If the company owns a foreign corporation which is deriving income from U.S. sources (such as receiving a royalty for an intangible being used in the U.S.), will there be an adverse effect on the U.S. foreign tax credit? [§904(g)]	_____	_____	_____
13) Has a determination been made as to which year the foreign tax is to be claimed as a credit? [§905(a)]	_____	_____	_____
14) Can the company comply with the requirements as to proving the amounts claimed as foreign tax credits (i.e., furnishing copies of foreign tax forms or receipts, etc.)? [§905(b)]	_____	_____	_____
15) Have the adjustment requirements been satisfied where foreign taxes claimed as a credit are revised in a later year? [§905(c)]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
16) If the legal organizational structure of the company has a mixture of both foreign and domestic corporations interspersed throughout the chain of ownership, have the deconsolidation rules concerning the foreign tax credit limitation been considered? [§901(i)]	<hr/>	<hr/>	<hr/>

INTERNATIONAL TAX ISSUES CHECKLIST**FOREIGN SALES CORPORATIONS (FSC)**

Warning: The citations contained in this checklist are to the U.S. Internal Revenue Code. Additional research may be required in the related regulations thereunder.

Overall purpose of this checklist: The purpose of this checklist is to assist the preparer in identifying issues relevant to U.S. based exporters that may be eligible to obtain tax benefits as the result of export activities.

Client Name and Number: _____

Prepared by: _____ Date: _____

Reviewed by: _____ Date: _____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<u>DETERMINATION OF EXPORT RECEIPTS</u>			
1) In order to qualify for the FSC benefits, the FSC must earn foreign trading gross receipts [§924(a)]. Accordingly, the company must satisfy one of the following criteria:			
.1) Does the company sell, exchange or otherwise dispose of export property?	_____	_____	_____
.2) Does the company lease or rent export property for use by a lessee outside the U.S.?	_____	_____	_____
.3) Does the company earn service revenues which are related and subsidiary to any sale, exchange or other disposition of export property?	_____	_____	_____
.4) Does the company earn service revenue for a lease or rental of export property?	_____	_____	_____
.5) Does the company earn fees for engineering or architectural services for construction projects located (or proposed for location) outside the U.S.?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
2) Certain receipts do not qualify for FSC benefits [§924(f)]. Accordingly:			
1.) Does the company receive payments for export property or services which are for ultimate use in the U.S.?	_____	_____	_____
2.) Does the company receive payments for export property or services which are for the use by the U.S. or any government instrumentality?	_____	_____	_____
3.) Does the company receive payments for export property or services which are accomplished by a subsidy granted by a U.S. governmental agency?	_____	_____	_____
4.) Does the company receive payments from another FSC which is a member of the same controlled group of corporations of which the recipient FSC is a member?	_____	_____	_____
5.) Does the company earn income categorized as investment income or carrying charges which are included in the sales price of export property or services?	_____	_____	_____

DEFINITION OF EXPORT PROPERTY

3) FSC benefits are only available for the sale, exchange, disposition, lease or rental of export property [§927(a) (1)]. Accordingly:			
1.) Is the property exported by the company manufactured, produced, grown or extracted in the U.S. by a person other than an FSC?	_____	_____	_____
2.) Is the property exported by the company held primarily for sale, lease or rental in the ordinary course of a trade or business by, or to, an FSC for direct use, consumption or disposition outside the U.S.?	_____	_____	_____
3.) Does the property exported by the company contain no more than 50% of its fair market value attributable to articles imported into the U.S.?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
4) Certain commodities are excluded from FSC benefits as export property [§927(a)(2)]. Accordingly:			
.1) Is the company's export property leased or rented by an FSC for use by any member of a controlled group of corporations of which the FSC is a member?	_____	_____	_____
.2) Does the company's export property consist of patents, inventions, models, designs, formulas or processes, whether or not patented, copyright (excluding films, tapes, records or similar reproductions for commercial or home use), goodwill, trademarks, tradegrants, franchises or other like property?	_____	_____	_____
.3) Does the company's export property consist of oil or gas (or any primary product thereof), unprocessed timber which is a softwood, or products prohibited from export by the Export Administration Act of 1979?	_____	_____	_____
5) To qualify for the FSC benefits, the company's exports must meet a foreign use, consumption or destination test [§927(a)(1)(B)]. Accordingly, does the company:			
.1) Deliver the export property within the U.S. to a carrier or freight forwarder for ultimate delivery outside the U.S. to a purchaser or a lessee?	_____	_____	_____
.2) Deliver the export property within the U.S. to a purchaser or lessee, if the property is ultimately delivered outside the U.S. by the purchaser or lessee within one year after the sale or lease?	_____	_____	_____
.3) Deliver the export property within or outside the U.S. to a purchaser or lessee which, at the time of the sale or lease, is an FSC or an interest charge DISC and is not a member of the same controlled group as the seller or lessor?	_____	_____	_____
.4) Deliver the export property from the U.S. to a purchaser or lessee at a point outside the U.S. by means of the seller's or lessor's own ship, aircraft, or other delivery vehicle?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.5) Deliver the export property outside the U.S. to a purchaser or lessee from a warehouse, storage facility or assembly site located outside the U.S. if the property was previously shipped from the U.S.?	_____	_____	_____
.6) Deliver the export property outside the U.S. to a purchaser or a lessee if the property was previously shipped by the seller or lessor from the U.S. and if the property is located outside the U.S. under a prior lease?	_____	_____	_____

ESTIMATE OF FSC BENEFITS

- 6) If the company exports, complete either or both of the two following worksheets to assist you in determining the possible tax benefits of establishing an FSC:

.1) Worksheet #1

Step 1

Multiply your pre-tax net export income (after allocation of all related expenses, including general and administrative and interest) by 23%:

\$ _____ x 23% = _____ (your FSC tax base)

Step 2

Multiply the product of Step 1 by 15/23:

\$ _____ x 15/23 = _____ (your FSC tax exempt income)

Step 3

Multiply the product of Step 2 by your current tax rate:

\$ _____ x _____ % =
(your tax savings with an FSC)

.2) Worksheet #2

Step 1

Multiply your foreign trading gross receipts by 1.83%:

\$ _____ x 1.83% = _____ (your FSC tax base)

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<u>Step 2</u> Multiply the product of Step 1 by 15/23:			
\$ _____ x 15/23 = _____ (your FSC tax exempt income)	_____	_____	_____
<u>Step 3</u> Multiply the product of Step 2 by your current tax rate:			
\$ _____ x _____ % = _____ (your tax savings with an FSC)	_____	_____	_____
.3) Consider the additional out of pocket costs of setting up and maintaining an FSC (e.g., initial and recurring registration fees, taxes and professional fees and administrative costs of FSC transactions) and compare to the FSC tax savings (greater of worksheet #1 or #2)	_____	_____	_____
7) Will the company's foreign trading gross receipts be \$5 million or less? [§924(b)(2)(B)(i)]			
Small exporters with \$5 million or less of foreign trading gross receipts may qualify for small FSC treatment and thus eliminate the foreign management and foreign economic process requirements discussed below [§924(b)(2)(A)]. Accordingly:			
.1) Would the company's small FSC meet the qualification requirements? [§922(a)(1)]	_____	_____	_____
.2) Would small FSC status be denied because another member of the company's controlled group has a regular FSC election in effect during any part of a taxable year during which a small FSC election is in effect? [§922(b)(2)]	_____	_____	_____
.3) If the company's small FSC will use either the 1.83% gross receipts method or 23% combined taxable income method for purposes of computing its transfer price, will there be a contract in place between the parent related supplier and the FSC under which all the foreign sales and cost activity will be considered as having been performed on the FSC's behalf by its parent? [§1.925(a) - 1T(b)(2)(ii)]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<u>TRANSFER PRICING</u>			
8) In computing the FSC benefits, there are a number of transfer pricing options between the U.S. related supplier and the FSC [§925]. Accordingly:			
.1) Will the company determine the FSC remuneration under a commission, buy-sell or other arrangement?	_____	_____	_____
.2) Will the company satisfy the performance of substantial economic functions to implement either the 1.83% gross receipts method or 23% combined taxable income method?	_____	_____	_____
.3) Will the company use the §482 method?	_____	_____	_____
.4) For transfer pricing purposes, will the company satisfy the full costing requirement for purposes of computing combined taxable income?	_____	_____	_____
.5) Will the company compute the FSC benefit on a transaction-by-transaction basis or under one of the grouping elections, and if so, how will the transactions be grouped?	_____	_____	_____
.6) Will the company be eligible to apply the marginal costing rules?	_____	_____	_____
<u>FSC REQUIREMENTS (APPLICABLE TO BOTH REGULAR AND "SMALL" FSCs.)</u>			
9) Once having decided to establish a FSC, the company must continue to maintain certain mechanical requirements. Accordingly:			
.1) Is the FSC located in an eligible U.S. possession or qualifying foreign country? [§922(a)(1)(A)(i) and (ii)]	_____	_____	_____
.2) Will the FSC shareholders not exceed 25? [§922(a)(1)(B)]	_____	_____	_____
.3) Does the client's FSC have any preferred stock outstanding? [§922(a)(1)(C)]	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.4) Does the FSC maintain an office in an eligible U.S. possession or qualifying foreign jurisdiction at all times during a taxable year? [§922(a)(1)(D)(i)]	_____	_____	_____
.5) Does the FSC maintain a set of permanent books of account including invoices at its qualifying foreign location? [§922(a)(1)(D)(ii)]	_____	_____	_____
.6) Does the FSC maintain at a location within the U.S. records sufficient to establish its income, deductions, etc.? [§922(a)(1)(D)(iii)]	_____	_____	_____
.7) Does the FSC have as a member of its board of directors at least one individual who is a nonresident of the U.S.? [§922(a)(1)(E)]	_____	_____	_____
.8) Is the FSC not a member of a controlled group of which a DISC is also a member during the taxable year? [§922(a)(1)(F) and §927(d)(4)]	_____	_____	_____
.9) Has the FSC filed a timely election? [§922(a)(2)]	_____	_____	_____
.10) Has the FSC's taxable year been conformed to the taxable year of its shareholder (or a group of shareholders) with the highest percentage of voting power? [§441(h)(1)]	_____	_____	_____
.11) Has the company considered if a shared FSC may be advantageous? [§927(g)]	_____	_____	_____
<u>ADDITIONAL REQUIREMENTS (APPLICABLE TO REGULAR FSCs ONLY.)</u>			
10) A large FSC must meet certain foreign management requirements [§924(c)]. Accordingly:			
.1) Will the meetings of the board of directors and all meetings of the shareholders of the FSC take place outside the U.S.?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.2) Will the FSC's principal bank account be maintained at all times during the taxable year in any country in which the FSC could be incorporated or in an eligible U.S. possession?	<hr/>	<hr/>	<hr/>
.3) Will all dividends, legal and accounting fees, and salaries of officers and directors disbursed during the taxable year be disbursed out of bank accounts of the FSC located outside of the U.S.?	<hr/>	<hr/>	<hr/>
11) A large FSC must meet certain foreign economic process requirements which consist of a foreign sales activity test and a foreign cost test [§924(d)]. Accordingly:	<hr/>	<hr/>	<hr/>
.1) With respect to the foreign sales activities test,			
.1a) Has the FSC participated outside the U.S. in activities constituting either solicitation, negotiation or making of the sales contract?	<hr/>	<hr/>	<hr/>
.1b) Can these sales activities be satisfied on either a transaction-by-transaction basis or under a grouping election?	<hr/>	<hr/>	<hr/>
.1c) If grouping, can such tests be met under either contract groupings, customer groupings, product or product line groupings, or product or product line groupings within a customer or contract grouping?	<hr/>	<hr/>	<hr/>
.2) With respect to the foreign direct cost tests:			
.2a) Will the FSC satisfy either the 50% or alternative 85% test?	<hr/>	<hr/>	<hr/>
.2b) Will the company apply these cost tests on a transaction-by-transaction basis, or alternatively under grouping elections?	<hr/>	<hr/>	<hr/>
.3) Will the company's activities concerning advertising and sales promotion meet the foreign direct cost requirements?	<hr/>	<hr/>	<hr/>
.4) Will the company's processing of customer orders and arranging of delivery satisfy the foreign direct cost test?	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
5) Will the company's transportation activities satisfy the foreign direct cost requirement?	_____	_____	_____
6) Will the company's determination and transmittal of final invoice or statement of account and receipt of payment activities constitute foreign direct costs?	_____	_____	_____
7) Will the company's assumption of credit risk satisfy the foreign direct cost requirements?	_____	_____	_____

INTERNATIONAL TAX ISSUES CHECKLIST**U.S. INCOME TAXATION OF EXPATRIATES**

Warning: All references contained in this checklist are to the U.S. Internal Revenue Code. Additional research may be required in the related regulations thereunder.

Overall purpose of this checklist: The purpose of this checklist is to assist the preparer in identifying income tax issues concerning the transfer of U.S. employees to foreign jurisdictions.

Client Name and Number: _____

Prepared by: _____ Date: _____

Reviewed by: _____ Date: _____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
1) Only qualified individuals are eligible for the foreign earned income exclusion [§911(d)(1)] Accordingly, do the company's employees fall within one of the following categories?			
.1) A U.S. citizen who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year.	_____	_____	_____
.2) A U.S. resident alien who is a citizen or national of a country with which the United States has an income tax treaty in effect and who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year. Note: This treatment requires disclosure under §6114.	_____	_____	_____
.3) A U.S. citizen or resident alien who is physically present in a foreign country or countries for at least 330 full days during any period of twelve consecutive months.	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
2) In order to qualify for the foreign earned income exclusion or the foreign housing exclusion, a transferred employee must maintain a tax home in a foreign country [§911(d)(1) and (3)]. Accordingly, will the company's transferred employee meet any of the following criteria:			
.1) Will the transferred individual reside in his or her general area of main place of business, employment, or post of duty?	_____	_____	_____
.2) If the transferred individual does not live within his or her general area of main place of business or employment, does the individual have a regular or main place of business in a location where he or she generally carries out duties as an employee?	_____	_____	_____
.3) If the individual is in a constant state of travel his or her tax home will be considered as wherever he or she works on an itinerant basis. Accordingly, are these locations all foreign?	_____	_____	_____
.4) In order to have a foreign tax home, the transferred individual must not maintain a U.S. abode. Accordingly, does the individual maintain a U.S. owned or rented residence solely for the purposes of temporary usage when present in the U.S.?	_____	_____	_____
.5) In order to eliminate the presence of a U.S. abode, if the individual has a U.S. residence prior to accepting the foreign assignment, will the individual be able to demonstrate that he or she does not maintain domestic work contacts in the area of former residence during the time he or she works abroad?	_____	_____	_____
.6) In order to eliminate U.S. abode, will the individual be able to demonstrate that living expenses are not duplicated in the U.S. and foreign location?	_____	_____	_____
.7) In order to eliminate U.S. abode, will the individual be able to demonstrate that he or she does not have a family member or members continuing to live at the U.S. address or frequently using the U.S. home for lodging during the period of foreign assignment?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
.8) In order to demonstrate that the location of the tax home is foreign, the individual must demonstrate that the foreign assignment is temporary or indefinite. Accordingly, is the foreign assignment realistically expected to last at least twelve months?	<hr/>	<hr/>	<hr/>
3) In order to claim the foreign earned income exclusion or the foreign housing exclusion, or deduction, the transferred individual must meet either a bona fide residence test or a physical presence test. Accordingly, with respect to the bona fide residence test [§911(d)(5)]:			
.1) Has the individual established a foreign residence?	<hr/>	<hr/>	<hr/>
.2) Statements to foreign authorities can deny the individual the right to the exclusions and deductions. Accordingly, has the individual made a statement of the authorities of the foreign country that he or she is considered not a resident of the host country?	<hr/>	<hr/>	<hr/>
.3) To qualify for the bona fide residence test, a specified time period must be satisfied. Accordingly, has the individual resided in a foreign country for an uninterrupted period that includes an entire tax year which runs from January 1 through December 31?	<hr/>	<hr/>	<hr/>
.4) Although the individual can leave the foreign country and return to the United States during this one year testing period, has the individual left the foreign country only for brief or temporary trips back to the United States or else for vacation or business?	<hr/>	<hr/>	<hr/>
.5) Once having left a foreign jurisdiction where the one year test is running, can the individual demonstrate that he or she had a clear intention of returning from such trips without unreasonable delay to the foreign residence or to a new bona fide residence in another foreign country?	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<p>6) Once having satisfied the bona fide residence test, it may be possible to use this test in order to obtain the foreign exclusions and deductions for partial years relative to the year of transfer abroad or the year of return back to the United States. Accordingly, has consideration been given to using the bona fide residence test in a year of transfer to or from the foreign post?</p> <p>Example: An individual is a bona fide resident in a foreign jurisdiction from March 1, 1990 through September 14, 1992. On September 15, 1992 the individual returned to the U.S. Since the individual was a bona fide resident of a foreign country for all of 1991, the individual qualifies as a bona fide resident from March 1, 1990 through September 14, 1992.</p>	<hr/>	<hr/>	<hr/>
<p>4) Alternatively, in order to obtain the foreign exclusions and deductions, the individual can meet a physical presence test [§911(d)(1)(B)]. Accordingly, will the individual be physically present in a foreign country or countries for 330 days (approximately 11 months) during a period of twelve consecutive months? (Note: The 330 qualifying days do not have to be consecutive nor do they have to fall in one calendar year.)</p>	<hr/>	<hr/>	<hr/>
<p>1) Note that the physical presence test is fairly liberal. Accordingly, have you considered vacation time in foreign countries for purposes of meeting the qualification?</p>	<hr/>	<hr/>	<hr/>
<p>2) However, on the other hand, the 330 day requirement is unconditional with one exception. Accordingly, have you appropriately considered all return trips to the U.S. for vacation or otherwise which count against the 330 day time requirement? Note: The only exception to the 330 day test is where an individual leaves because of a war or civil unrest.</p>	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
3) For purposes of counting the 330 days, a full day is specifically defined. Accordingly, have you considered a full day as a period of 24 consecutive hours beginning at midnight? Note: The individual must spend each of the 330 full days in a foreign country.	<hr/>	<hr/>	<hr/>
4) Although foreign travel is permissible during the 330 day period, has the individual during his or her foreign travels not been within a foreign country or countries for 24 hours or more? Note: This will count against the 330 day requirement.	<hr/>	<hr/>	<hr/>
5) Only foreign earned income is eligible for the foreign earned income exclusion and the foreign housing exclusion/deduction. [§911(b)]. Accordingly, have you considered only the compensation the individual has received for services performed in a foreign country during a period his or her tax home was in a foreign country and he or she met either the bona fide residence test or the physical presence test?	<hr/>	<hr/>	<hr/>
6) Have you excluded from the foreign earned income amounts classified as meals and lodging furnished for the convenience of the individual's employer?	<hr/>	<hr/>	<hr/>
1) Have you excluded from these foreign benefits amounts received as a pension, annuity or social security benefits?	<hr/>	<hr/>	<hr/>
2) Have you excluded from these benefits amounts contributed by the individual's employer to a nonexempt employee trust or to a nonqualified annuity contract?	<hr/>	<hr/>	<hr/>
3) Have you excluded from these benefits amounts received after the end of the year following the year in which the individual has performed the services that earned the income?	<hr/>	<hr/>	<hr/>
4) Have you included within these benefits amounts received after the end of the tax year in which the services were performed but before the end of the tax year following such year?	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
5) Only earned income is eligible for these benefits. Accordingly, have you included only amounts such as salaries, wages, commissions, bonuses, professional tips, etc.?	_____	_____	_____
6) Various allowances are also considered earned income for purposes of these foreign benefits. Accordingly, have you considered compensation items such as lodging, meals, automobiles, cost of living, overseas differential, family, education, home leave, quarters, moving, etc.?	_____	_____	_____
7) Only income from foreign sources is eligible for these benefits. Accordingly, have you verified that none of the compensation paid is for a specific amount of labor or personal services performed in the United States? Note: If there is no specified assignment of compensation for work performed in the United States, a time basis is most appropriate. Accordingly, in most cases you will make this determination by multiplying the total pay by a fraction based upon time spent in the United States vs. time spent abroad.	_____	_____	_____
8) Certain employment expenses can be excluded from foreign earned income. Accordingly, have you considered expenses which are reimbursed to the transferred individual which he or she incurred on behalf of his or her employer and which have accounted to the employer with respect to the expenses?	_____	_____	_____
7) For purposes of the foreign earned income exclusion and the foreign housing exclusion/deduction, there are special rules with respect to moving expenses. [§1.911-6(b)]. Where the move is from the U.S. to a foreign country:			
1) Will the individual satisfy either the bona fide residence test or physical presence test for at least 120 days during the year of the move? Note: If so, the reimbursement will be considered as earned solely in the year of the move for purposes of the foreign earned income exclusion.	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<p>2) Will the individual fail to qualify under either the bona fide residence or physical presence test for 120 days during the year of the move? Note: If such is the case the reimbursement will be considered earned in the year of the move and the year following the year of the move for purposes of the foreign earned income exclusion. Furthermore, the reimbursement will be allocated between the two years as demonstrated by the following example:</p> <p>Example: An individual is a U.S. citizen employed in the U.S. who is transferred to a foreign country on December 15, 1995. The individual will qualify as a bona fide resident for the remainder of 1995 and the entire tax year of 1996. The employer reimburses the individual \$6,000 in January, 1996 for the expense of moving to the foreign country. Because the individual does not qualify as a bona fide resident for at least 120 days during 1995, the reimbursement will be considered as payment for services performed in the foreign country for the tax years 1995 and 1996. To determine the amount of the moving expense reimbursement for services performed in the foreign country in 1995, this amount will be determined by multiplying the total reimbursement by a fraction. The fraction will be the number of days during which the individual was a bona fide resident in 1995 divided by 365. The remaining part of the reimbursement will be for services performed in the foreign country for 1996. It should be noted that this computation is used only to determine when the reimbursement is earned for purposes of the foreign earned income exclusion and not the year in which the amount is to be reported and included in income. The income inclusion is based upon the year in which the amount is received.</p>			
<p>3) If the individual moves between foreign countries, does he or she satisfy either the bona fide residence test or physical presence test for at least 120 days during the year of the move? Note: In such case no proration of the moving expense reimbursement is required for purposes of the foreign earned income exclusion.</p>			

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
4) If the move is between foreign countries, does the individual fail the 120 day bona fide residence or physical presence test for the year of the move? Note: A proration between the year of the move and the subsequent year is required for the foreign earned income exclusion.	<hr/>	<hr/>	<hr/>
5) Is the moving expense reimbursement for a move back to the United States a determination of the foreign assignment? Note: Such amounts are generally considered U.S. source income. However, if there is an agreement between the employer and the individual or a written statement of company policy indicating that the employer will reimburse the employee for the move back to the U.S., the reimbursement can be considered as compensation for past services performed in a foreign country.	<hr/>	<hr/>	<hr/>
8) An individual employee transferred to a foreign post is entitled to a foreign earned income exclusion [§911(a)(1)]. Accordingly,			
1) Have you considered the limitation on the foreign earned income exclusion? Note: You cannot exclude more than the smaller of \$70,000 or the excess of the individual's foreign earned income for the tax year over the foreign housing exclusion.	<hr/>	<hr/>	<hr/>
2) Is your client involved in a situation where both he/she and his/her spouse meet either the bona fide residence test or the physical presence test and both work abroad? Note: In this instance the combined exclusion cannot exceed \$140,000.	<hr/>	<hr/>	<hr/>
3) Did the individual perform services in 1996 but not receive income for those services until 1997? Note: The income is generally considered earned in 1996. However, an exclusion for the income in the year of receipt is available to the extent that it would have been eligible for the foreign earned income exclusion in 1996 had it been received in 1996.	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
4) Is a portion of the compensation comprised of a bonus which is based on services performed over several tax years? Note: You must determine the amount of the bonus that is considered earned in a particular tax year by dividing the bonus by the number of calendar months in the period when the services were performed and then multiplying the result by the number of months those services were performed during the tax year. Thus, this allocation over the period will have an impact on the foreign earned income	<hr/>	<hr/>	<hr/>
5) Did the individual receive income more than one year after it was earned for services abroad? Note: Income received after the end of the tax year following the year in which the services were performed is not eligible for the foreign earned income exclusion.	<hr/>	<hr/>	<hr/>
6) Are the individuals resident in a community income jurisdiction? Note: The maximum exclusion applies individually to the earnings of a husband and wife and community property laws are ignored.	<hr/>	<hr/>	<hr/>
7) Does the individual qualify under either the bona fide residence test or physical presence test for only part of the tax year? Note: The foreign earned income exclusion as well as the foreign housing exclusion/deduction must be prorated.	<hr/>	<hr/>	<hr/>
8) Have you met the procedural requirements with respect to choosing the foreign earned income exclusion? Note: The foreign earned income exclusion is executed by completing the appropriate parts of Form 2555, "Foreign Earned Income."	<hr/>	<hr/>	<hr/>
9) Have you timely filed your elections? Note: Your initial choice of the exclusion must be filed with the timely filed return, including any extensions, return amending a timely filed return, or a late filed original return filed within one year after the due date without regard to any extensions.	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
10) Are there any provisions to make a late filed election for the foreign earned income exclusion? Note: If the original due date of the return including extensions is on or after October 1, 1992, the time to file a late filed return and choose the foreign earned income exclusion has been extended for twelve months. In other words, the individual can choose to claim the foreign earned income exclusion on a late filed return filed within two years from the due date of the return.	<hr/>	<hr/>	<hr/>
9) Another benefit available to an individual transferred to a foreign post is the foreign housing exclusion or deduction. This amount is in addition to the foreign earned income exclusion [§911(a)(2)]. Accordingly:			
1) What housing expenses are available for the foreign housing exclusion or deduction? Note: These expenses include reasonable expenses paid or incurred for housing in a foreign country, including rent, repairs, utilities, excluding telephone charges, real and personal property insurance, nondeductible occupancy taxes, nonrefundable fees for securing a leasehold, rental of furniture and accessories, residential parking, etc. Note: Excluded from housing expenses are amounts for lavish or extravagant expenditures. Also excluded are deductible interest and taxes, or the cost of buying property, including principal payments on a mortgage. Also excluded is the cost of domestic labor, cable television, improvements and other expenses which increase the property's value.	<hr/>	<hr/>	<hr/>
2) Have you deducted from the total housing expenses the housing base amount in order to determine the foreign housing exclusion? Note: The base amount is 16% of the annual salary of a GS-14 Step 1 U.S. government employee and changes from year to year. During 1996, this amount was pegged at \$9,242 per annum or \$25.26 per day.	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
<p>3) Assuming the housing expenses are reimbursed by the employer, have you considered the foreign housing exclusion as the difference between the housing expenses which are provided by the employer and the base housing amount? Note: For transferred employees, the employer provided housing amount includes the individual's salary, any reimbursement for housing expenses, any amounts the employer pays to a third party for housing, the fair rental value of company owned housing furnished to the individual (unless for the employer's convenience), amounts paid to the individual as part of a tax equalization policy, and amounts paid to a third party for the education of dependents.</p>	<hr/>	<hr/>	<hr/>
<p>4) Has the foreign housing exclusion been appropriately elected? Note: The individual can choose the housing exclusion by completing the appropriate parts of Form 2555.</p>			
<p>10) When claiming the foreign earned income exclusion or the foreign housing exclusion, certain tax benefits are denied. [§911(d)(6)]. Accordingly:</p>			
<p>1) Have you identified the expenses which must be allocated to the excluded income and thus not be deductible? [Reg. §1.911-6] Note: The following amounts are deductible irrespective of the foreign earned income exclusion, i.e., medical expenses, certain retirement contributions, real estate taxes, mortgage interest on a personal residence, charitable contributions, alimony payments, and personal exemptions.</p>	<hr/>	<hr/>	<hr/>
<p>2) With respect to the foreign tax credit for foreign taxes imposed on the foreign earnings, have you reduced the foreign taxes eligible for the foreign credit to the extent that such foreign taxes are attributable to the foreign earned income exclusion or foreign housing exclusion?</p>	<hr/>	<hr/>	<hr/>

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
11) With respect to moving expenses:			
.1) Have the requirements as to distance and time been satisfied?	_____	_____	_____
.2) Have the deductible moving expenses been properly identified, (i.e., moving of household goods and personal effects, transportation and lodging enroute to the new location)?	_____	_____	_____
.3) With respect to outward moves, have the moving expenses been allocated between includable income and excludable income under the foreign earned income or foreign housing exclusion thus reducing the moving expense deduction?	_____	_____	_____
12) With respect to other legislation affecting the transferred employee:			
.1) Have the host country tax implications of transferring the employee been considered?	_____	_____	_____
.2) Does the U.S. have a tax treaty with the host jurisdiction which could modify these results?	_____	_____	_____
.3) What are the U.S. Social Security tax implications with respect to the transferred executive?	_____	_____	_____
.4) What are the host country Social Security tax implications of transferring the employee?	_____	_____	_____
.5) Does the U.S. have a Social Security tax treaty (totalization agreement) with the host country which could serve to reduce the Social Security tax obligation?	_____	_____	_____
.6) What are the inheritance or gift tax implications in the host jurisdiction with respect to the transferred employee?	_____	_____	_____
.7) Does the U.S. have an estate or gift tax treaty with the host jurisdiction which could modify the host country legislation?	_____	_____	_____

	<u>DONE</u>	<u>N/A</u>	<u>COMMENTS OR EXPLANATION</u>
8) If the transferring employee plans to sell a principal residence, has the employee considered the provisions allowing for the suspension of up to two years of the reinvestment period to roll over the gain from the sale of the principal residence while the employee's tax home is outside the U.S.? [§1034(k)]	<hr/>	<hr/>	<hr/>
9) If a transferring employee plans to purchase or sell a foreign principal residence, has the employee considered the foreign currency gain and loss implications of both the foreign principal residence and the underlying mortgage (e.g., loss on residence and gain on mortgage or vice versa)? [Rev. Rul. 90-79]	<hr/>	<hr/>	<hr/>
10) If the transferring employee plans to rent a principal residence to others while on foreign assignment, has the employee considered that the mortgage interest may be characterized as "qualified residence interest," thereby allowing the interest to be excluded from the determination of the property's passive activity loss? [§469(j)(7)]	<hr/>	<hr/>	<hr/>
11) Has the appropriate time for filing the U.S. income tax return been determined? Note: Time for filing is generally June 15 if the tax home is outside the U.S. or 30 days after the individual qualifies for the foreign earned income exclusion, whichever is later. The latter date may extend to January 30 of the second year following the tax year if the individual must qualify under the bona fide resident test for the year of transfer to a foreign country (See Form 2350).	<hr/>	<hr/>	<hr/>